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An Olympic Joke: Sanctioning the Olympic Movement

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AN OLYMPIC JOKE: SANCTIONING THE OLYMPIC MOVEMENT

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The International Olympic Committee (IOC) leads the modern Olympic Movement and controls the pinnacle quadrennial sporting event, the Olympic Games. Through a tightly-organized bureaucracy, the IOC asserts control over athletes, nations, and sponsors alike to assure a picture-perfect event. Recurrent scandals amidst the Olympics, including human rights abuses, state-sanctioned doping, and bidding corruption, can be traced back to the IOC. While it is quick to condemn and control others, the IOC has yet to take true responsibility for any of these systematic failures or abuses.

The IOC will demand accountability when untaxed revenues are available for the taking and will wash its hands or look the other way when a blemish to its reputation or threat to its revenues is perceived. Can any entity demand legal accountability from the IOC in the wake of its ongoing leadership failures? This paper explores the arguments by which international courts, state actors, and those in the Olympic Movement can demand accountability from the IOC, and ultimately improve the Olympic experience for all.

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I. INTRODUCTION

*“The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship solidarity and fair play.”*¹

Under the Declaration of Human Rights, “[e]veryone has the right to rest and leisure,”² and sport participation is a quintessential leisure activity. The International Olympic Committee (IOC) further asserts “the practice of sport is a human right.”³ What international regulations and sanctions can be imposed if that human right is violated?

The earliest Olympic Games were held over 2,700 years ago in ancient Greece.⁴ While the Games were officially nothing more than a memory for 1,500 years,⁵ they inspired a legacy and spirit which remained as a sort of cultural mythos.⁶ The present-day Olympic Movement traces its lineage to Baron Pierre de Coubertin, who formed the first International Olympic Committee (IOC) in 1894.⁷

The modern Olympic Movement has noble beginnings, both literally and figuratively. Baron de Coubertin envisioned the Olympic Games as a means to improve the physical, moral and social character of his native France through “a grand project of international breadth.”⁸ Members of

1. *Promoting Olympism In Society*, OLYMPIC.ORG, <https://www.olympic.org/the-ioc/promote-olympism> (last visited Oct. 3, 2017).

2. G.A. Res. 217A (III), art. 24 (Dec. 10, 1948).

3. International Olympic Committee [IOC], *OLYMPIC CHARTER*, at 11 (Aug. 2, 2015).

4. *History*, OLYMPIC, <https://www.olympic.org/ancient-olympic-games/history> (last accessed October 3, 2017).

5. *Id.* The original Olympics were discontinued after 393 A.D. *Id.*; see also *The Real Story of the Ancient Olympic games: The Games*, Penn Museum, <https://www.penn.museum/sites/olympics/olympicorigins.shtml> (last visited Oct. 16, 2018).

6. DAVID GOLDBLATT, *THE GAMES: A GLOBAL HISTORY OF THE OLYMPICS* 9–11 (2016).

7. DAVID MILLER, *THE OFFICIAL HISTORY OF THE OLYMPIC GAMES AND THE IOC* 33 (2012).

8. *Id.* at 29.

the first IOC were recruited from the noble and ruling classes in order to build the prestige of the group.⁹

What do the Olympics stand for in the twenty-first century? The image of an athlete smiling and holding a gold medal atop a podium as their country's national anthem plays and the world stops to marvel at human achievement may be what first comes to mind.¹⁰ There will be no coverage of the impoverished families evicted to make way for the Olympic Village where the athlete had stayed¹¹ or the human-rights abuses to which laborers were subjected in construction of the athletic facilities.¹² There will be no discussion of the ways in which the athlete's nation of origin sought to enhance the performance of members of its team¹³ or the potential team members silenced and disqualified within the nation for raising concerns of abusive practices by coaches and training programs.¹⁴

9. *Id.* at 33.

10. *See, e.g.,* Sterling Xie, *Olympic 2014 Results: Medal Winners and Highlights from Each Event on Final Day*, BLEACHER REP. (Feb. 24, 2014), <http://bleacherreport.com/articles/1971092-olympic-2014-results-medal-winners-and-highlights-from-each-event-on-final-day> (depicting an image of three athletes on podium).

11. *E.g.,* DANIELA FICHINO ET AL., GUIDE FOR JOURNALISTS AND MEDIA PROFESSIONALS: HUMAN RIGHTS VIOLATIONS IN THE OLYMPIC CITY 20 (2016), <https://www.boell.de/sites/default/files/2016-08-human-rights-violations-olympic-city.pdf> (noting over 75,000 people forcibly evicted from largely impoverished areas to make way for facilities used in the 2016 Rio Games).

12. *See* Sue Reisinger, *Track Star Turned Attorney Helps Put First Anti-Corruption Clause in Olympic Host Contract*, CORP. COUNS. (Aug. 2, 2017), <https://advance.lexis.com/api/permalink/8ce1babf-deda-4fdf-92f2-d966473a142b/?context=1000516>.

13. *See, e.g.,* Fola Akinnibi, *Athletes, Officials Pitch Congress On Anti-Doping Reform*, LAW360 (Feb. 28, 2017, 2:54 PM) <https://advance.lexis.com/api/permalink/905406b5-4b9f-4c6e-bdf8-de587851751d/?context=1000516>.

14. *See, e.g.,* Will Hobson & Steven Rich, *An athlete accused her coach of sex abuse. Olympic officials stayed on the sideline*, WASH. POST (Feb. 24, 2017), https://www.washingtonpost.com/sports/olympics/an-athlete-accused-her-coach-of-sex-abuse-olympic-officials-stayed-on-sideline/2017/02/14/35a6fc76-d2eb-11e6-a783-cd3fa950f2fd_story.html. *See also* SAFE4ATHLETES, <http://safe4athletes.org> (last visited September 9, 2017).

Few people would ever assume that those who are called “volunteers” at the Olympic Games are in fact well-compensated,¹⁵ and the Olympic leadership treats itself to hundreds of thousands of dollars each year in perks as a means of “athlete support.”¹⁶ The cameras will be long gone by the time the athlete has returned home and is in need of financial, medical or psychological support.¹⁷

At its core, the Olympics are not a bi-annual spectacle, but a massive cesspool of corruption on both a financial and performance level, which leave a trail of human-rights abuses in its wake. Every two years, the media hype leading up to the Games will include mention of construction costs that far exceed the amount budgeted by the host city in their bid¹⁸ submitted years before.¹⁹ Occasionally, media attention is given to the plight and decay of Olympic facilities years after the Games have left their host cities.²⁰

While some Olympians have begun to publicly question the future of their own sports on the world stage,²¹ it is time to question the role of the IOC itself given its position of authority over all Olympic matters. This paper will address the legal means by which the IOC as a legal person

15. Will Hobson, *Olympic executives cash in on a ‘Movement’ that keeps athletes poor*, WASH. POST (July 30, 2016), https://www.washingtonpost.com/sports/olympics/olympic-executives-cash-in-on-a-movement-that-keeps-athletes-poor/2016/07/30/ed18c206-5346-11e6-88eb-7dda4e2f2aec_story.html.

16. *Id.*

17. Jodi Xu, *China’s Disposable Athletes*, TIME (July 17, 2007), <http://content.time.com/time/world/article/0,8599,1644120,00.html> (discussing a medaled athlete who is without recourse after retirement from competitions, despite past assurances that China would provide for athletes for the rest of their lives).

18. Charles Riley, *Nobody wants to host the Olympic Games*, CNNMONEY SPORT (Oct. 11, 2016, 10:58 AM), <http://money.cnn.com/2016/10/11/news/olympic-games-cost-rome-2024/index.html>. Riley notes that multiple cities that have withdrawn bids for future Olympic Games, most notably Boston, Massachusetts, as taxpayer-funded projects routinely return little discernable economic benefit. *See id.*

19. *See id.* (Bidding for the 2024 Summer Games occurred in 2016–2017).

20. *E.g.*, Sam Belden, *What abandoned Olympic venues from around the world look like today*, BUS. INSIDER (Aug. 3, 2017, 4:33PM), <http://www.businessinsider.com/abandoned-olympic-venues-around-the-world-photos-rio-2016-8>.

21. MILLER, *supra* note 7, at 9 (interviewing Michael Johnson, five-time Olympic champion).

can be held accountable for its actions or inactions that result in a violation of human rights. Section II of this paper provides the background of the IOC's formal structure and its current legal relationships. Section III will explain how the IOC's self-imposed rules have failed thus far, as well as those reforms attempted amid past controversies. Part IV of this paper will cover two means by which the IOC's structural failures can be rectified to ultimately preserve the Olympic Games: first, as a means of international judicial authority, which could be exercised against a legal person such as the IOC; second, as a system by which nations can pre-emptively regulate an entity through treaties and agreements.

II. THE BUREAUCRACY OF THE IOC IN BRIEF

The IOC operates without legal accountability to any entity. The IOC is the self-appointed supreme authority of the Olympic Movement²² and has granted itself binding decision-making authority over “any person or organisation [sic] belonging in any capacity . . . to the Olympic Movement.”²³ This power and position is by design: the IOC's founding members were oligarchs who brought the fledgling group the prestige necessary to achieve de Coubertin's vision.²⁴ IOC members then serve as ambassadors *from* the IOC *to* their country of origin.²⁵

The IOC is recognized for having a unique international position. The United Nations has given the IOC recognition for its role in sports development.²⁶ Legally, the IOC is a nongovernmental, non-profit organization, recognized in 2000 as a legal person following an agreement with the Swiss Federal Council.²⁷ The IOC operates in

22. IOC, *supra* note 3, ¶ 1, at 17.

23. *Id.* at 18, ¶ 4.

24. See MILLER, *supra* note 7, at 33.

25. *Id.*

26. Nick Butler, *IOC Pledge to work “even harder” after sport included within UN Development goals*, INSIDE THE GAMES (Sept. 26, 2015), <https://www.insidethegames.biz/articles/1030492/ioc-pledge-to-work-even-harder-after-sport-included-within-un-development-goals> (referencing G.A. Res. 70/1, ¶ 37 (Sept. 25, 2015)).

27. IOC, *supra* note 3, ¶ 1, at 33.

Lausanne, Switzerland as a “guest” of the Swiss government.²⁸ The Swiss government has financial and privacy laws which benefit the IOC and the many other organizations based there.²⁹ For example, until recently, bribery activities were not *per se* illegal under Swiss law.³⁰

There are three main parties of the Olympic Movement: the IOC, the International Sports Federations (IFs), and National Olympic Committees (NOCs).³¹ Each of these major parties has subsidiaries, such as national sports clubs and, ultimately, the athletes who actually participate in sport.³² The IOC is empowered to grant revenues to IFs and NOCs, among others, to facilitate development of the Olympic Movement.³³ The World Anti-Doping Association (WADA) and the International Court for Arbitration of Sport (ICAS) were founded by the IOC and now are semi-autonomous entities within the IOC bureaucracy. This largely decentralized power structure allows the IOC to operate across the globe while retaining ultimate control over the direction of the Olympic Movement. As will be discussed below, the IOC asserts that control inasmuch as it benefits the IOC, its image, and bank accounts.³⁴

A. The International Olympic Committee (IOC)

Affairs of the IOC are managed by its Executive Board. The IOC Session elects Executive Board members, who include royalty and former business and sports executives.³⁵ In a sense, the political stature of the IOC members has not changed significantly since the time of the founding of the Olympic Movement. The Executive Board is the ultimate authority of the IOC: decisions by the Executive Board are final and

28. *Id.* at ¶ 2.

29. *Swiss MPs pass ‘Lex Fifa’ anti-corruption law*, SWISSINFO (Sept. 10, 2015), https://www.swissinfo.ch/eng/politics/clamping-down_swiss-mps-pass--u2018lex-fifa-u2019-anti-corruption-law/41652890.

30. *Id.*

31. IOC, *supra* note 3, ¶ 2, at 17.

32. *Id.* at ¶ 2–3.

33. *Id.* at 54, ¶ 2.

34. *See infra* Section II.A.

35. *See generally* IOC Executive Board, OLYMPIC.ORG, <https://www.olympic.org/executive-board>, (last visited Oct. 29, 2017).

without appeal.³⁶ There is no balance of power by which the IOC Session can counter an Executive Board decision. The IOC Executive Board is empowered to establish sub-commissions which may report to the IOC Session.³⁷ All entities report to the Executive Board.³⁸ Two IOC sub-commissions of note include the Ethics Commission and the Legal Affairs Commission.

The IOC Ethics Commission (EC) was established as a permanent entity within the IOC in the aftermath of the Salt Lake City scandal.³⁹ The first members of the permanent EC established what is now the IOC's Code of Ethics.⁴⁰ The EC is empowered to independently investigate potential ethics violations, but sanctions are proposed by the EC to the IOC Executive Board for review.⁴¹ The EC is comprised of nine members, including both former and active IOC members and some who are independent of the IOC and sport completely.⁴² As of September 2017, the current IOC EC chair is former United Nations Secretary-General Ban Ki-Moon.⁴³

The Legal Affairs Commission has “both a consultative and operational role” in advising the IOC Executive Board.⁴⁴ This IOC commission is not directly established by the Charter Bye-laws.⁴⁵ Legal Affairs Commission members are practicing attorneys from both Europe and the United States. The Legal Affairs Commission, unlike the Ethics Commission, is not a standing entity, but one assembled as needed.⁴⁶ It is

36. IOC, *supra* note 3, ¶ 1, at 105. In some cases, a dispute may be resolved by the Court of Arbitration for Sport (CAS). *Id.*

37. *Id.*

38. *Id.*

39. MILLER, *supra* note 7, at 331.

40. *Id.*

41. *Ethics Commission*, OLYMPIC.ORG, <https://www.olympic.org/ethics-commission> (last visited Oct. 29, 2017).

42. *Id.*

43. Liam Morgan, *Ban Ki-moon promises to improve accountability of IOC as members speak out on corruption allegations*, INSIDE THE GAMES (Sept. 14, 2017), <https://www.insidethegames.biz/articles/1055403/ban-ki-moon-vows-to-enhance-accountability-of-ioc-as-members-speak-out-on-corruption-allegations>.

44. *Legal Affairs*, OLYMPIC.ORG, <https://www.olympic.org/legal-affairs> (last visited Oct. 29, 2017).

45. IOC, *supra* note 3, ¶ 1, at 51.

46. *Id.*

unclear from the IOC's public materials why the Executive Board activated the Legal Affairs Commission as of October 2017.

The IOC asserts its direct control over the Olympic Games. The IOC chooses the date of the Olympiad and the host city to which it will "entrust" the Games.⁴⁷ A host city is represented by an Olympic Game Organizing Committee (OGOC). In its early years, the IOC's selection process for host cities was more the result of picking cities that succumbed to the IOC's begging rather than being at the IOC's choosing.⁴⁸ Since the advent of television rights, the IOC's relationship to Olympic Games host cities has remarkably changed.⁴⁹ Host city elections generally occur seven years before a Game is to be held.⁵⁰ As part of the bidding process, the national government of an applicant city must execute a contractual agreement with the IOC to respect the Olympic Charter.⁵¹

The IOC contract to host the Olympic Games with a host city's government is broad and can even trump some citizenship rights established by that government.⁵² The IOC closely controls the day-to-day and even minute details of OCOG operations.⁵³ The IOC also controls those entities able to act within the Olympic Movement by granting authorization to individual sport IFs and each NOC. By accepting IOC authorization, the IFs and NOCs agree to meet those obligations imposed by the IOC.⁵⁴ While recognition does come with some funding to be handed down by the IOC,⁵⁵ most of the parties' obligations are handed down from the IOC without an articulated

47. *See id.* at ¶ 3–¶ 4, at 71.

48. ROBERT K. BARNEY ET AL., *SELLING THE FIVE RINGS: THE INTERNATIONAL OLYMPIC COMMITTEE AND THE RISE OF OLYMPIC COMMERCIALISM* x (2002)(Preface).

49. *Id.* at 181–82.

50. IOC, *supra* note 3, ¶ 2, at 72.

51. *Id.* at ¶ 3.

52. *See* *Sagen v. Vancouver Org. Comm. for the 2010 Olympic & Paralympic Winter Games*, [2009] B.C.C.A. 522, ¶. 48–50. (Can. B.C.C.A.).

53. *Id.* at ¶ 15–16.

54. *Id.* at ¶ 22 (noting "IFs and NOCs take direction only from the IOC").

55. *Revenue Sources and Distribution*, OLYMPIC.ORG, <https://www.olympic.org/ioc-financing-revenue-sources-distribution> (last visited Oct. 29, 2017). The IOC represents that 90% of Olympic Movement revenues are distributed to NOCs, IFs, and OGOCs. *Id.*

corresponding responsibility for the IOC as to the actions of the IF or NOC.

B. International Sports Federations (IFs)

The IOC has the authority to grant recognition to those IFs which administer one or more sports at a global level. IFs that are granted IOC recognition must conform to the IOC's requirements laid out in Chapter 3 of the Olympic Charter.⁵⁶ This requirement seems somewhat disingenuous, as the Olympic Charter also states that IFs will otherwise maintain independence and retain autonomous sport administration.⁵⁷ IOC requirements for IFs include establishment and enforcement of the rules of the IF's sport and the Olympic Charter; to show support for and participation in the IOC; and to take responsibility, technical control, and direction of the IF's particular sport during the Olympic Games.⁵⁸

In other words, the IOC mandates that IFs that wish to be recognized by the IOC, and thus gain the opportunity for the IF's sport to be an Olympic Event, must show fealty to the IOC. The IF must then supervise practice of the IF's sport at the Olympic Games. In short, the IOC dictates the manner in which the IF administers the IF's sport. Therefore, it is hard to say whether the IFs truly retain a position of autonomous administration.

C. National Olympic Committees (NOCs)

The Olympic Charter states that NOCs have the mission of "develop[ing], promot[ing] and protect[ing] the Olympic Movement [with]in their respective countries."⁵⁹ The IOC utilizes its revenues in part to support NOC activities in developing world nations, such as funding basic athletic facilities.⁶⁰ Much like those obligations imposed on IFs by official recognition, IOC-recognized NOCs are obligated to

56. See IOC, *supra* note 3, ¶ 1, at 58.

57. *Id.* at 57.

58. *Id.* ¶ 1, at 58.

59. *Id.* ¶ 1, at 61.

60. *Revenue Sources and Distribution*, *supra* note 50.

“ensure the observance of the Olympic Charter in their countries.”⁶¹ The Olympic Charter is rather vague as to the accountability imposed by the IOC upon an NOC to demonstrate how the NOC fulfills its obligations to the IOC, or otherwise justifies the receipt of IOC funding. General governance principles would assume there is some sort of reporting structure to channel information up the hierarchy as a condition of funding flowing down from the party that controls the purse.

Recognition by the IOC creates additional responsibilities for the NOC specific to the Olympic Games. A NOC must establish an Olympic Team on behalf of the NOC’s nation.⁶² IOC recognition obligates NOCs to send athletes to participate in the Summer Games.⁶³ NOCs also must play a role in a country’s Olympic Games host bid. Assuming multiple cities within a country wish to submit a bid for evaluation as an Olympic host city, the country’s NOC is responsible for choosing which city will be nominated on behalf of its country.⁶⁴ The NOC will have supervisory authority over the OGOC should its nomination be accepted as a Games host city.⁶⁵ In other words, the NOC, with its independent obligations to the IOC, has a role in the bidding process and evaluation completed by the IOC.⁶⁶ Therefore, the IOC has granted itself a role on both sides of the negotiating table for an Olympic host bid.

D. The World Anti-Doping Agency and the International Court for the Arbitration of Sport

The World Anti-Doping Agency (WADA) was established in 1999, in part by the IOC. Today, WADA receives half of its funding from the IOC and the remaining half from other world governments.⁶⁷ The Olympic Charter mandates compliance with the World Anti-Doping

61. IOC, *supra* note 3, ¶ 2, at 61.

62. *Id.*

63. *Id.* ¶ 3, at 62. The Summer Games are the official event that begins the quadrennial Olympiad period. *See, e.g., COOL RUNNINGS* (Walt Disney Pictures 1993).

64. IOC, *supra* note 3, ¶ 1.3, at 73.

65. *Id.* ¶ 1.4.

66. *See id.*

67. *Funding*, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/funding> (last visited Oct. 28, 2017).

Code for anyone participating in the Olympic Movement.⁶⁸ The IOC delegates to WADA daily management of the anti-doping program at the Olympics.⁶⁹

The International Court for the Arbitration of Sport (ICAS) is also a creation of the IOC.⁷⁰ The Court was intended as a sport-specific forum.⁷¹ An International Court of Justice (“ICJ”) judge and past IOC vice president has described the CAS as a body which sets rules and legal norms for the IOC’s governance.⁷² While the CAS may have been intended as an ICJ for sport, its powers are limited to arbitration of matters that the parties have a pre-existing agreement to subject to the CAS. Therefore, matters which do not arise out of a contractual agreement cannot be brought before the ICAS.

III. THE IOC’S FAILURES DESPITE ITS CURRENT BUREAUCRATIC SYSTEM

The IOC has developed a bureaucratic scheme to administer the Olympic Movement at the global, national, and local levels, including an adjudicative forum (ICAS) and enforcement agency (WADA). The IOC sanctions sports adjudications through the ICAS and polices the activities of athletes through WADA. However, this system has failed its athletes at multiple levels. These failures, including bidding corruption, human rights abuses, and the lack of effective controls through existing IOC bureaucracies, will be discussed. These governance failures will be contrasted with the IOC’s careful management of its revenue-generating intellectual property rights.

68. IOC, *supra* note 3, at 81.

69. See *Report of the Independent Observers: Games of the XXXI Olympiad, Rio de Janeiro 2016*, WORLD ANTI-DOPING AGENCY 4, https://www.wada-ama.org/sites/default/files/resources/files/rio2016_io_team_report_26102016.pdf (last visited Oct. 28, 2017at)

70. *History of the CAS*, COURT OF ARBITRATION FOR SPORT, <http://www.tas-cas.org/en/general-information/history-of-the-cas.html> (last visited Oct. 27, 2017)

71. *Id.*

72. MILLER, *supra* note 7, at 327.

A. Bidding Corruption

Corruption (or at least the possibility of corruption) lurks beneath every transaction required in the IOC bidding process.⁷³ The Olympic Games pose a significant opportunity for a host city to receive positive international recognition and can serve as a platform to elevate international prestige, assuming the Games and the surrounding logistics are well-managed.⁷⁴ However, that assumption has not played out historically. Nearly every Games held in the last forty years, Summer or Winter Games, has had at least one set of questionable circumstances, if not an outright scandal, associated with its bidding process or execution.⁷⁵ As the IOC either directly or indirectly controls both sides of the negotiation table, it effectively engages in what is at best a mild form of self-dealing for each Olympic Games.

The bidding corruption and bribery uncovered have led to some individuals facing criminal charges, but the IOC has denied that it encourages or allows a culture of gift-giving that facilitates these illegal actions.⁷⁶ The IOC's official history states that lavish treatment was the expectation of a "minority of IOC members."⁷⁷ The IOC Executive Committee had established membership rules that were wantonly ignored, and for a period its leadership felt it was normal for an organization of this scope to have a few "rotten apples in the barrel."⁷⁸

Salt Lake City, Utah and Nagano, Japan fiercely competed for the hosting rights to the 1998 Winter Olympic Games. Nagano's selection was attributed to an ability to outspend the Salt Lake City Organizing

73. See generally Julie H. Liu, Note and Comment, *Lighting the Torch of Human Rights: the Olympic Games as a Vehicle for Human Rights Reform*, 5 NW. U. J. INT'L HUM. RTS. 213 (2007).

74. See *id.* at 235.

75. See, e.g., Gerry Brown, *Controversy and Scandal at the Winter Olympics*, INFOPLEASE <https://www.infoplease.com/controversy-and-scandal-winter-olympics> (last accessed December 2, 2018). MILLER, *supra* note 7, at 327. As a counterpoint, Keba M'Baye, an ICJ Judge and past IOC Vice-President, stated in an interview with David Miller that abuses of conduct standards hardly constitute corruption, given the term's "legal meaning." *Id.*

76. *Id.* at 328.

77. *Id.*

78. *Id.*

Committee (SLOC).⁷⁹ Salt Lake City was subsequently awarded the 2002 Winter Olympic Games. It was later uncovered that the SLOC had gone to great lengths to assure a second bid would be successful, including lavish trips for IOC members and college scholarships for members' children.⁸⁰ Criminal charges were brought against the leaders of the SLOC,⁸¹ which the SLOC leadership defended as within normal bid city practices.⁸² While the SLOC's leaders were eventually acquitted, the damage was done.⁸³ In the aftermath, then-IOC President Juan Antonio Samarach was called to testify before a United States Congressional panel.⁸⁴ Multiple reform efforts were launched at this time.

The 2012 Sochi Winter Olympic Games experience will likely have a profound impact on the future of Olympic host city bids. To some credit, no corruption or bribery involving the IOC has been alleged in the wake of Russia's bid for its first Winter Games. However, Russia's endemic internal corruption is believed to have contributed to the overall cost of the Sochi Olympics.⁸⁵ At a cost of over \$50 billion USD, the Sochi Games will be remembered for being the most expensive Games to date.⁸⁶

The full scope of how Rio de Janeiro was selected to host the 2016 Olympic Games is still being uncovered. In October 2017, Carlos Nuzman, the simultaneous head of both the Rio OGOC and Brazilian NOC, was arrested and suspended from his Olympic duties.⁸⁷ A

79. *Id.* at 327–28. The SLOC's president's wife's response to Salt Lake City's loss was: "We just ran out of money." *Id.* at 327.

80. *Id.* at 328.

81. *Id.* at 333.

82. *Id.* at 328.

83. Daniel Woodruff, *Years after acquittal, former Utah Olympics boss receives public 'thank you'*, KUTV (Mar. 30, 2016), <http://kutv.com/news/local/former-utah-olympics-boss-honored-for-distinguished-service>.

84. MILLER, *supra* note 7, at 334.

85. Adam Taylor, *Why Sochi Is By Far the Most Expensive Olympics Ever*, BUSINESS INSIDER (Jan. 17, 2014), <http://www.businessinsider.com/why-sochi-is-by-far-the-most-expensive-olympics-ever-2014-1>. One highway constructed for the Sochi games cost more than the 2010 Vancouver Olympics. *Id.*

86. *Id.*

87. Ernesto Londono & Tariq Panja, *Brazil's Olympic Committee Head Is Detained in Bribery Inquiry*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/world/americas/brazil-olympics->

whistleblower has come forward with allegations that the IOC was on notice of Nuzman's corruption prior to the 2016 Rio Games and failed to investigate.⁸⁸ Thus far, the legal definition of corruption may have been met: allegations include that Nuzman and others made bribery payments in exchange for votes supporting Rio's bid.⁸⁹ The investigation has ensnared one IOC Executive Board member, who has voluntarily stepped down while under investigation for bribes he may have accepted.⁹⁰

B. The IOC Shuns Ownership for Abuses in the Olympic Games

The fundamental principles of Olympism set forth "a philosophy of life[:]" the "practice of sport is a human right," which should be possible without discrimination and with mutual understanding.⁹¹ This right is largely asserted on behalf of sport participants, i.e. athletes. However, athletes cannot practice sport, let alone participate in an international competition, without appropriate facilities.

In the construction of those facilities for each Olympic Games, there are frequent allegations of discrimination, labor abuses, and other human rights concerns. Following a host city's selection, the IOC imposes a

bribery.html?rref=collection%2Fnewseventcollection%2FRio%20Olympics%202016. REUTERS, *IOC suspends Brazil's Nuzman after arrest over vote-buying allegations* (Oct. 6, 2017) <https://uk.reuters.com/article/uk-brazil-corruption-olympics/ioc-suspends-brazils-nuzman-after-arrest-in-vote-buying-scandal-idUKKBN1CB1QG>

88. Tariq Panja, *Whistle-Blower Says He Told of Rio Olympics Corruption Years Ago*, N.Y. TIMES (Sept. 8, 2017), <https://www.nytimes.com/2017/09/08/sports/olympics/whistle-blower-says-he-told-of-rio-olympics-corruption-years-ago.html?rref=collection%2Fnewseventcollection%2FRio%20Olympics%202016>. The whistle-blower alleges that the IOC directed him to share his concerns with the Brazilian NOC, which was the source of the complaints. *Id.*

89. Tariq Panja, *Olympics Bribery Inquiry Includes Société Générale Transactions*, N.Y. TIMES (Oct. 2, 2017), <https://www.nytimes.com/2017/10/02/sports/olympics/rio-olympics-bribery.html?rref=collection%2Fnewseventcollection%2FRio%20Olympics%202016>.

90. Nick Butler, *Exclusive: Hickey resigns from IOC Executive Board*, INSIDE THE GAMES (Sept. 9, 2017), <https://www.insidethegames.biz/articles/1055190/exclusive-hickey-resigns-from-ioc-executive-board>.

91. IOC, *supra* note 3, ¶ 1, ¶ 4, at 13.

strict construction timetable for the Olympic Games.⁹² There is a history of these abuses occurring, particularly in the countries where the IOC is hoping to expand Olympic interest.⁹³ Yet the IOC is willing to give lip service to these problems as the product of either the host city OGOC's or country NOC's failure to adequately plan.

The Olympic Games in some sense are an equalizer, where athletes from all nations compete on the same field. However, construction of the Olympic Games' venues has a disproportional negative impact on lower income populations.⁹⁴ The sites chosen for Olympic events often require the forced eviction of a disadvantaged group.⁹⁵ While the standardized Olympic Host City Contract references land acquisition as part of venue development, it does not set forth any detailed obligations for the OGOC or expectations of the IOC.⁹⁶ While the IOC encourages consideration of sustainability and legacy,⁹⁷ the IOC does not involve itself in ongoing inspections of venues during construction.

The nomadic nature of the Olympic Games necessitates that new facilities are constructed for each Games. Labor abuses are frequently perceived during and after the construction of Olympic facilities.⁹⁸ The preparations for each Olympiad raise human rights concerns for those construction workers subject to inhumane work hours for inadequate wages with little or no health and safety protections.⁹⁹ The Host City Contract mandates the size of hanging space for clothes in the Olympic

92. See, e.g., *Olympic Contract for 2024*, INT'L OLYMPIC COMM., VEN 05, 83 (Dec. 2016), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Operational-Requirements.pdf>. This problem is likely exacerbated by limitations imposed on IOC member visits to bidding cities in the wake of the Salt Lake City scandal. See MILLER, *supra* note 7, at 332.

93. See, e.g., Xu, *supra* note 17; Riley, *supra* note 18.

94. See, e.g., FICHINO ET AL., *supra* note 11.

95. *Id.* at 20.

96. *Olympic Contract for 2024*, INT'L OLYMPIC COMM., VEN 05, 83 (Dec. 2016), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Operational-Requirements.pdf>.

97. *Id.* at 81.

98. See, e.g., FICHINO ET AL., *supra* note 11.

99. LIU, *supra* note 73, at 227.

Village rooms, yet does not create any obligations regarding construction management.¹⁰⁰ This area of human rights abuse will continue as Games are held in developing world nations without human rights laws or strict labor protections.

Although the IOC now encourages temporary or demountable venues, the permanent venue spaces are often under-utilized post-Games. The result is further disenfranchisement of the poor for the benefit of a few select wealthy individuals.¹⁰¹ For example, infrastructure development generally does not meet the long-term needs of host city citizens.¹⁰² While it is easy to say that these problems are not for the IOC to solve, the fact that such problems arise in, during, or after each Olympic Games suggests the IOC is in position to develop a solution for these long-term problems through the Host City Contracting process.¹⁰³ Such scrutiny may ultimately prevent the downstream negative perceptions which former host city residents then attribute to the Olympic Movement and protect the reputation of the Olympic Movement.

Human trafficking is also a problem at many major sporting events. The Olympics Games are no exception to this sad fact.¹⁰⁴ The IOC has not directly spoken to the issue of human trafficking, although its charter references social responsibility and improving socio-economic conditions in communities which host the Olympic Games.¹⁰⁵ However, the massive media undertaking that is the Games today creates multiple opportunities for human traffickers to operate.¹⁰⁶ While human

100. *Olympic Contract for 2024*, *supra* note 96, VIL 08, at 92.

101. *See, e.g.*, BELDEN, *supra* note 20 (Rio's Olympic golf courses).

102. *See id.* (underuse of Beijing facilities).

103. For example, the Host City Contract requires that dining hall food menus be submitted to the IOC for approval, and that athletes have access to a florist. *Olympic Contract for 2024*, *supra* note 96, VIL 11, VIL 17, at 95–96.

104. Mobina Jaffer, *What Human Trafficking Has to do with the Olympics*, HUFFINGTON POST, http://www.huffingtonpost.ca/senator-mobina-jaffer/olympics-human-trafficking_b_1704321.html (last updated Sept. 26, 2012 5:12 EDT).

105. *See* SEX INDUSTRY WORKER SAFETY ACTION GROUP, HUMAN TRAFFICKING, SEX WORK SAFETY, AND THE 2010 GAMES: ASSESSMENTS AND RECOMMENDATIONS, 4.46 (June 10, 2009), <http://vancouver.ca/police/assets/pdf/reports-policies/report-human-trafficking-2010-games.pdf>.

106. *See, e.g.*, Brittney Cason, *IT HAPPENED TO ME: I Almost Became a Victim of Human Trafficking at the Sochi Olympics*, XOJANE (Feb. 24, 2014), <https://www.xojane.com/it-happened-to-me/it-happened-to-me-human-trafficking-at-the->

trafficking is not the focus of this paper, it cannot go unmentioned in a dissection of the Modern Olympic Games' major flaws.

C. Failures in Anti-Doping Controls

Concerns of athletic performance enhancement have long been an issue in the Olympic Games.¹⁰⁷ A variety of substances can be used to increase performance, ranging from pharmaceutical cornucopias of steroids to infusions of red blood cells (known as blood doping).¹⁰⁸ Throughout modern Olympic history, performance enhancement was to some degree an unspoken part of Olympic culture, with more retribution for those who spoke out against doping than those who doped.¹⁰⁹

The U.S. is one of many countries to encourage or turn a deliberate blind eye to athletic performance enhancement, with complicity from the leaders of U.S. sports organizations and the U.S.O.C. in the 1980s and 1990s.¹¹⁰ In 2016, Russia was exposed to have organized an elaborate state-sponsored system to assure its athletes were able to compete in an enhanced state at the Sochi Olympics.¹¹¹ WADA's subsequent McLaren

sochi-olympics (recounting a radio broadcaster's personal experience of recruitment for a supposed broadcasting job that was determined to be a con before she left for Russia).

107. MATTHEW LLEWELLYN & JOHN GLEAVES, *THE RISE AND FALL OF OLYMPIC AMATEURISM* 167 (2016).

108. Michael Powell, *Lest We Forget, the U.S., Too, Spent Time in the Doping Wilderness*, N.Y. TIMES (Aug. 4, 2016), https://www.nytimes.com/2016/08/05/sports/olympics/lest-we-forget-the-us-too-spent-time-in-the-doping-wilderness.html?_r=0.

109. See Karolos Grohmann, *Any danger to whistleblower Stepanova not an IOC issue-Bach*, Reuters (Aug. 20, 2017), <https://www.reuters.com/article/us-olympics-rio-stepanova/any-danger-to-whistleblower-stepanova-not-an-ioc-issue-bach-idUSKCN10V0Q4>. See also Karen Crouse, *Clean Athletes, and Olympic Glory Lost in the Doping Era*, N.Y. TIMES (Aug. 1, 2016), <https://www.nytimes.com/2016/08/01/sports/olympics/shirley-babashoff-swimming-montreal-olympics-medals.html> (discussing Shirley Babashoff's denigration for speaking out against the apparent doping by East German swimmers during the 1976 Olympics). See, e.g., Thomas Hunt, *DRUG GAMES: THE INTERNATIONAL OLYMPIC COMMITTEE AND THE POLITICS OF DOPING, 1960–2008* (Univ. of Texas Press 2011).

110. Powell, *supra* note 108.

111. Rebecca R. Ruiz & Michael Schwirtz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, N.Y. TIMES (May 12, 2016), <https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html>.

Report found that the Russian government and Sochi OGOC swapped Russian athlete samples processed in testing laboratories to enable those athletes to remain in competition.¹¹² The IOC has claimed to offer support to Yulia Stepanova, one of the whistleblowers to expose the Russian system, but denied it had any responsibility to offer her security, even after her competition accounts were hacked.¹¹³

The Chinese have also been accused of subjecting national athletes to a systematic doping scheme.¹¹⁴ Recent allegations report that more than 10,000 Chinese athletes were subjected to a mandatory doping system and that dissenters were either dropped from their sport teams or jailed.¹¹⁵ Past accounts of Chinese state-sponsored doping have alleged this system starts with athletes as young as eleven years old.¹¹⁶

Following the Rio 2016 Olympic Games, WADA retained an independent observer to analyze the Games' anti-doping program performance.¹¹⁷ The Rio Report notes several complete logistical failures not solely attributable to any party: these process gaps and budget cutbacks resulted in limited anti-doping program resources, limited resources for chaperones to supervise testing, and an inability to fine athletes for violations.¹¹⁸ The Rio Report does not single out any national teams for testing non-compliance.¹¹⁹ The report notes that the overall logistical failures were "foreseeable and entirely avoidable."¹²⁰ Given the IOC's asserted level of control over OCOG operations, these failures should be attributed, to some degree, to the IOC.

Athletes compete and audiences spectate with the expectation of a level playing field. The IOC's stated role in anti-doping is "to protect

112. WORLD ANTI-DOPING AGENCY, MCLAREN INDEPENDENT PERSON REPORT 1 (2016), https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf.

113. Grohmann, *supra* note 109.

114. Sean Ingle, *China 'Compulsorily Doped' Athletes In 1980s and 90s, Claims Whistleblower*, GUARDIAN (Oct. 22, 2017), <https://www.theguardian.com/sport/2017/oct/22/china-compulsory-doping-olympic-athletes-claims-whistleblower-athletics>.

115. *Id.*

116. *Id.*

117. *See generally* MCLAREN INDEPENDENT PERSON REPORT, *supra* note 112.

118. *See* WORLD ANTI-DOPING AGENCY, *supra* note 69, at 5–6.

119. *Id.*

120. *Id.* at 7.

clean athletes and the integrity of sport” through actions taken to prohibit doping, competition manipulation, and the political or commercial abuse of athletes.¹²¹ Additionally, the IOC states it will promote protections for athlete medical care and health needs as well as their social and professional futures.¹²² However, these efforts are likely not enough to establish effective controls and prevent illegal performance enhancements, especially where the IOC refuses to take reasonable actions in response to known issues.¹²³ Current IOC practices will likely dissuade future whistle-blowers, who can look to Yulia Stepanova and assume that the IOC may ban them and will not protect those who uncover doping schemes.

D. The IOC in the Legal System

The ICAS was created by the IOC with the vision that it would function as “a kind of Hague Court for Sport.”¹²⁴ What resulted was an international arbitration forum for contractual and tort matters. However, not all sports-related disputes are taken to this forum for arbitration.¹²⁵

As a result, matters involving the IOC as a defendant are just as likely to be presented to a traditional court as to the Court of Sport. The IOC, despite its global operations, is able to have claims against it dismissed for lack of jurisdiction or to push Switzerland as the more appropriate forum.¹²⁶ The transient nature of Olympic events would likely make it impossible for a wronged athlete to know where he or she can even establish jurisdiction; let alone that the athlete will have the resources to

121. IOC, *supra* note 3, ¶ 8, at 18.

122. *Id.* ¶ 8–¶12, at 18–19.

123. See Rebecca R. Ruiz, *I.O.C. Members Berate WADA Over Russia Scandal*, N.Y. TIMES (Aug. 2, 2016), <https://www.nytimes.com/2016/08/03/sports/olympics/international-olympic-committee-world-anti-doping-agency.html>. The IOC refused to penalize Russian Federation athletes over what it deemed to be WADA’s failure, despite athletes demanding stronger action. *Id.*

124. MILLER, *supra* note 7, at 327.

125. See, e.g., MILLER, *supra* note 7, at 326. (The IOC’s decision to ban an athlete was overturned by the CAS because of the lack of an agreement between the IOC and the relevant IF).

126. *Elfarnawani v. Int’l Olympic Comm. & Ethics Comm’n*, [2011] ONSC 6784 (Can. O.N.S.C.).

bring the matter before a court with the proper jurisdiction.¹²⁷ Additionally, Swiss Private International Law allows the CAS to determine its own jurisdiction regarding matters brought before it.¹²⁸ As a result, despite a sport-exclusive forum, many possible legal disputes may end up in a judicial black hole without any venue for recourse.¹²⁹

On the plaintiff's side, the IOC has been quick to assure legal enforcement of its intellectual property rights. The IOC has either directly established its rights to intellectual property identifying the Olympic Movement or has required that an NOC obtain and enforce those rights in that NOC's country on behalf of the IOC.¹³⁰ For example, the IOC requires that NOCs and OGOCs assert legal claims on the IOC's behalf or risk loss of the NOC or OCOG's own authorization.¹³¹ This has resulted in numerous lawsuits to prohibit unauthorized use of the Olympic symbol and the Olympic Games broadcast.¹³²

The IOC has utilized its supreme authority to regulate those in the Olympic Movement hierarchy but has insulated itself from scrutiny or review. The IOC is a proponent of, and continues to use, the traditional justice system when such use asserts the rights of or otherwise benefits the IOC's revenues or reputation.¹³³ However, the IOC is quick to seek dismissal of those lawsuits that do not benefit the IOC's revenues or

127. *Id.* at ¶ 26. Assuming Swiss jurisdiction is appropriate, an athlete must find a qualified Swiss lawyer to bring the case, incur travel expenses from the athlete's home country to Switzerland, and any other related costs.

128. *See, e.g.*, Arbitration CAS 2017/A/5065 Jacksen Ferreira Tiago v. Football Association of Penang & Football Association of Malaysia (FAM), award of 25 October 2017, 18 ¶ 1

<http://jurisprudence.tas-cas.org/Shared%20Documents/5065.pdf> (referencing Article 186 of the Swiss Private International Law Act and international arbitration doctrines).

129. *See, e.g., id.* The CAS maintains an online database of its decisions. JURISPRUDENCE, (last visited Jan. 26, 2019) <http://jurisprudence.tas-cas.org/Help/Home.aspx>.

130. *See, e.g., Olympic Contract for 2022*, INT'L OLYMPIC COMM., IP 07, 41 (July 2015), https://stillmed.olympic.org/Documents/Host_city_elections/Host-City-Contract-XXIV-Olympic-Winter-Games-in-2022--Beijing-Execution-no-signature.pdf.

131. Sydney Org. Comm. For The Olympic Games v. Zhu, [2002] NSWCA 380, ¶ 37–38 (Austl.).

132. BARNEY ET AL., *supra* note 48, at XIII.

133. *See e.g.*, S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm., 483 U.S. 522, 527–28 (1987); *see, e.g.*, U.S. Olympic Comm. v. Intelicense Corp., S.A., 737 F.2d 263, 265, 269 (2d Cir. 1984).

reputation.¹³⁴ Additionally, the IOC also puts forth a forced-arbitration system for athletic disputes and contractual matters.

IV. CAN THIRD PARTIES ASSERT CONTROL OVER THE IOC?

The system which the IOC has built to manage the Olympic Movement is unsustainable. The problem stems from the nature of the IOC itself: IOC Session and Executive Board members are international business and political leaders, a group accustomed on some level to the use of lavish gifts, corporate largesse, bribery, and extortion as a means of facilitating transactions.¹³⁵ How can the IOC be expected to police its members and subsidiaries for behavior that many would find generally acceptable? The obvious answer is for there to be a means of third-party accountability for the IOC.¹³⁶

The IOC has registered itself as a legal person and regularly asserts legal rights it derives from that persona. However, as a legal entity, the IOC could reasonably have duties imposed in response to its actions.

Creating a system of accountability for the IOC beyond itself, whatever type of entity it is, could be achieved through a variety of paths. General corporate governance standards include some measure of accountability for leadership to the organization at large.¹³⁷ The IOC could be recognized as an international legal person equivalent to a state actor and thus subject to international laws and accountable to the global community at large. Individual countries could exert stricter controls on the actions of non-state actors which would like to host, sponsor, or oversee the organization of events within the country. Finally, the IOC could change itself and the way it operates to be more accountable and transparent to its global constituents.

134. See generally *Sagen v. Vancouver Org. Comm. for the 2010 Olympic & Paralympic Winter Games*, [2009] B.C.C.A. 522 (Can. B.C.C.A.).

135. Bruce Klaw, *State Responsibility for Bribe Solicitation and Extortion: Obligations, Obstacles, and Opportunities*, 33 BERKELEY J. INT'L L. 60, 62 (2015).

136. See, e.g., Bruce W. Bean, *An Interim Essay on FIFA's World Cup Of Corruption: The Desperate Need For International Corporate Governance Standards At FIFA*, 22 ILSA J. INT'L & COMP. L. 367, 384 (2016); See, e.g., William Thomas Worster, *Relative International Legal Personality of Non-State Actors*, 42 BROOK. J. INT'L L. 207 (2016).

137. Bean, *supra* note 136, at 384.

A. Can the International Community Demand Accountability and Assert Control Over the IOC?

Whatever standard the IOC wishes to have applied, it does not seem justifiable that the IOC can continue to claim international rights as a legal person without corresponding legal duties.¹³⁸ Despite the lack of clear international law on this issue, there is an argument to be made that international legal personality should carry both rights and obligations.¹³⁹ If the IOC is established as an international person, it could be held liable for the criminal actions or inactions of IOC Executive Board and General Session members. William Worster argues that “where an international organization violates international law, it is held responsible under international law.”¹⁴⁰ International law is typically thought of as applied to only to state actors. However, non-state actors may assert legal personhood in some situations or specific relationships.¹⁴¹

The IOC is technically a non-state actor yet presents itself more as a state than a corporation.¹⁴² For example, the IOC cited its constitution and organizational structure to prevent the dismissal of a President just as a corporation could dismiss a CEO.¹⁴³ The IOC styles its members as ambassadors from the IOC back to the member’s nation of origin.¹⁴⁴ Where a non-state actor has chosen to blur the lines as to its own status, what can be done?

Clear laws do not exist as to whether an entity is a person or not for international purposes. Worster describes two tests to determine the role of a non-state actor: through the actor’s objective actions, or through actions taken towards the actor.¹⁴⁵ Under either prong, the IOC can be considered an international legal person.¹⁴⁶ The value of this personhood

138. See Worster, *supra* note 136.

139. *Id.* at 207–08.

140. *Id.* at 213.

141. *Id.* at 208.

142. IOC, *supra* note 3, ¶ 1, at 17.

143. MILLER, *supra* note 7, at 332.

144. *Id.* at 33.

145. Worster, *supra* note 136, at 211.

146. *Id.*

assessment is whether the entity can be held responsible for international crimes before the International Court of Justice.¹⁴⁷

For example, the United Nations was determined to be an international legal person, after review by the ICJ.¹⁴⁸ Legal personhood for a non-state actor is by some measures rather like the children's story *The Velveteen Rabbit*, in that the non-state actor's status can be defined by a state actor's response. Do state actors seem willing to perceive the IOC as a legal person? Recent actions by the United States to investigate the IOC as an entity, as well as its individual members, may not support that conclusion.

On the other hand, the ICJ has previously protected an international organization from some aspects of legal personhood.¹⁴⁹ For example, in the 1999 *Simic* proceedings, the ICJ ruled that the International Committee of the Red Cross (ICRC) was not under the court's jurisdiction in the same manner as a state actor.¹⁵⁰ The ICRC had intervened to prevent a former ICRC employee from providing witness testimony regarding observed human rights abuses.¹⁵¹ The ICRC cited its established reputation and custom in the international community as a confidential, neutral party as a basis for its ability to intervene and prevent the testimony.¹⁵² The ICJ upheld the ICRC's position as an international organization, but also equated the organization's customary practices to maintain confidentiality as customary international law.¹⁵³

The ICJ has thus recognized an international organization's customary practices as a legal standard. In this circumstance, the ICRC appeared to have its cake and eat it, too. However, this recognition could have vastly different implications if the involved organization was the IOC. The ICRC could justify its confidentiality practices through both its internal standards and other international documents that recognized the ICRC's

147. *Id.* at 244–45.

148. *Id.* at 209.

149. *See* Prosecutor v. Simic et al., Case No. IT-95, Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, ¶ 6 (Int'l Crim. Trib. for the Former Yugoslavia July 27, 1999), <http://www.icty.org/x/cases/simic/tdec/en/90727EV59549.htm>.

150. *Id.* ¶ 78.

151. *Id.* ¶ 10.

152. *Id.* at ¶ 13–14.

153. *Id.* at ¶ 78–79.

unique role and ultimate objective to provide humanitarian aid as a neutral party in armed conflicts.¹⁵⁴ The IOC, on the other hand, does not enjoy the same level of third-party recognition as a humanitarian organization.¹⁵⁵ Its confidentiality practices have centered around maintaining the reputation of the IOC in the eyes of its corporate sponsors. While the ICJ is not bound by precedent from an international criminal tribunal, the arguments which benefitted the ICRC in the *Simic* proceedings would most likely not be beneficial to the IOC's case before an ICJ tribunal for several reasons.¹⁵⁶

First, the IOC has empowered itself through the Olympic Charter and the Fundamental Principles of Olympism to have a specific political role and to "play an active part in bringing about change in the context and practice of international sport through adherence to human rights."¹⁵⁷ The IOC has previously utilized the Olympic Games as a means to facilitate political opinion.¹⁵⁸ For example, the IOC has previously used the Olympic Charter to justify exclusion of South Africa during apartheid.¹⁵⁹ Therefore, unlike the ICRC, the IOC has empowered itself to actually take actions that assert a political voice.

Second, the IOC is recognized as an international promulgator of sports standards by courts.¹⁶⁰ The standards that the IOC sets, such as for the definition of a sport, have been persuasive authority for courts such as the European Court of Justice in issuing judgements, which is akin to the role of customary international law.¹⁶¹ The IOC is recognized as the global regulatory body for athletic competition.¹⁶² By contrast to the

154. See, e.g., *Mandate and Mission*, INT'L COMM. OF THE RED CROSS (ICRC), <https://www.icrc.org/en/who-we-are/mandate> (last visited Oct. 19, 2018) (noting the as ICRC "an independent, neutral organization" providing emergent humanitarian response to violence and armed conflict in a manner which "promotes respect for international humanitarian law and its implementation in national law").

155. See, e.g., Hobson, *supra* note 15; cf. Liu, *supra* note 73.

156. See *infra* notes 130, 133.

157. Liu, *supra* note 73, at 218.

158. *Id.* at 219.

159. *Id.* at 218–19.

160. Case C-90/16, *English Bridge Union Ltd v. Revenue & Customs Comm'rs*, 2017 EUR-Lex CELEX LEXIS 616CC0090 (June 15, 2017).

161. *Id.* ¶ 38–40.

162. Richard Stewart, *Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 A.J.I.L. 211, 217 (2014).

Simic proceedings, the ICRC does not promulgate standards that hold the weight of customary international law.¹⁶³

Under Worster's theory, it may not be necessary to respect the traditional legal personality protections granted to international organizations should the organization commit a violation of international law.¹⁶⁴ The United Nations Convention on Corruption, adopted in 2003, is an instrument designed to address the illicit diversion of public funds for personal gain, particularly in developing countries.¹⁶⁵ It encourages measures to regulate both public and private sector entities.¹⁶⁶ This Convention has been ratified by the majority of U.N. members,¹⁶⁷ and thus could be considered customary international law.¹⁶⁸

This paper has enumerated several instances where the IOC has likely violated international law or where the circumstances demonstrate a lack of institutional integrity that merits serious consideration before an ICJ tribunal.¹⁶⁹ The IOC's current bidding system creates perverse financial incentives and provide ample opportunity for greed to flourish. Even more troubling is the IOC's lack of ownership or authority in the face of state-sanctioned doping programs.¹⁷⁰ In both scenarios, whistleblowers have come forward without protection from the IOC. Both scenarios carry a significant human cost. Yet, whether the issue is doping or bribery, the IOC has put its reputation and revenues ahead of the

163. *Statement: We must listen and act, not impose*, ICRC (Mar. 28, 2018), <https://www.icrc.org/en/document/icrc-presidents-address-community-engagement-and-accountability> (noting the passive nature of the ICRC's involvement in situations); *see also* ICRC, *supra* note 149 (noting the ICRC mission is to follow and not create international humanitarian law).

164. *See generally* Worster, *supra* note 117, at 211–12, 216.

165. *See* G.A. Res. 58/4, U.N. Convention Against Corruption, at 5, (Oct. 31, 2003), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

166. *See id.* at 10–11, 14–15.

167. *UN Convention Against Corruption: Signature and Ratification Status*, UNODC, <http://www.unodc.org/unodc/en/corruption/ratification-status.html> (last visited Oct. 29, 2017).

168. *See, e.g.*, VALERIE EPPS & LORIE GRAHAM, *EXAMPLES & EXPLANATIONS: INTERNATIONAL LAW* (2d. ed. 2014).

169. *See supra* Section III.A.

170. *See supra* Section III.C.

protections it could offer, and asserts those that denigrate the values of the Olympic Movement.¹⁷¹

B. Can Individuals States Demand Accountability and Assert Control Over the IOC?

Another possible justification for action against the IOC could arise out of the IOC's Swiss legal personage and new Swiss criminal statutes. In 2015, Switzerland amended its Criminal Code through a bill known in the media as "Lex FIFA."¹⁷² This set of laws, which became effective July 1, 2016, makes it a criminal offense to bribe foreign public officials, or to give or accept bribes to a private individual that acts in an official capacity on behalf of a third party.¹⁷³ However, the geographic extent to which this recent amendment to the Swiss Criminal Code applies is unclear. By contrast, Germany's anti-bribery law states that it applies to offenses that occur within Germany and outside of Germany by or against a German.¹⁷⁴

There are two nuances of note that may expand the reach of this new Swiss law: Switzerland's agency statute¹⁷⁵ and its corporate criminal liability statute.¹⁷⁶ Swiss agency law creates a special obligation for

171. See *supra* Section III.B.

172. SWISSINFO, *supra* note 30.

173. SCHWEIZERISCHES STRAFGESETZBUCH [STGB] [CRIMINAL CODE] [CP] Sept. 25, 2015, AS 2016 1287, art. 322, 322octies, 322septies, 322novies (Switz.). "Any person who as an employee, partner, agent or any other auxiliary of a third party in the private sector demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty." *Id.*

174. Jost Arnsperger, *German Anti-Bribery and Anti-Corruption Law – An Introduction*, ANTI-CORRUPTION BLOG (June 26, 2013), <http://www.anticorruptionblog.com/germany/german-anti-bribery-and-anti-corruption-law-an-introduction/>.

175. SCHWEIZERISCHES STRAFGESETZBUCH [STGB] CRIMINAL CODE [CP] Sept. 27, 2013 SR 812.121, art. 29-7 (Switz.).

176. SCHWEIZERISCHES STRAFGESETZBUCH [STGB] CRIMINAL CODE [CP] Sept. 25, 2015, AS 2016 1287, art. 102 (Liability under the criminal law) (Switz.).

violations by governing officers of legal entities.¹⁷⁷ Thus, any criminal law violation by a member of the IOC Executive Board could have ramifications under Swiss law for the IOC. While the IOC has been able to distance itself from the agents of alleged Olympics agents,¹⁷⁸ the unfolding action against an IOC Executive Board member could enable a Swiss prosecutor to bring formal charges against the IOC as a whole.¹⁷⁹

Additionally, “Lex FIFA” amended the Swiss corporate criminal liability statute to penalize a legal entity that “has failed to take all the reasonable organisational [sic] measures that are required in order to prevent such an offence” regardless of the involved natural person’s criminal liability.¹⁸⁰ To avoid “Lex FIFA” penalties, the IOC must demonstrate the organizational measures it has taken to prevent criminal actions by its rogue members.¹⁸¹ As this paper has laid out, there is ample evidence available to Swiss prosecutors to demonstrate that the IOC is on notice of such a risk, and has even acknowledged such in its official history.¹⁸² The question would be whether past IOC reforms have been reasonable enough measures, given the possible reforms that have been left on the table.

Finally, U.S. standards merit some discussion as the American corporate marketplace is the financial base of the IOC.¹⁸³ For example, most American corporations indemnify their officers and directors.¹⁸⁴ The IOC, by contrast to American standards, has let its members take the

177. SCHWEIZERISCHES STRAFGESETZBUCH [StGB] CRIMINAL CODE [CP] Sept. 27, 2013 SR 812.121, art. 29-7 (Switz.).

178. See *Elfarnawani v. International Olympic Committee & Ethics Commission*, [2011] O.J. No. 5059, 209 A.C.W.S. (3d) 539, Decision (Can. O.N.S.C. Oct. 17).

179. SCHWEIZERISCHES STRAFGESETZBUCH [StGB] CRIMINAL CODE [CP] Sept. 27, 2013 SR 812.121, art. 29-7 (Switz.).

180. SCHWEIZERISCHES STRAFGESETZBUCH [StGB] CRIMINAL CODE [CP] Sept. 25, 2015, AS 2016 1287, art. 102 (Liability under the criminal law) (Switz.).

181. Katharine Biele, *The pressures and pitfalls of bidding to host Olympics*, CHRISTIAN SCIENCE MONITOR, (Dec. 18, 1998) <https://www.csmonitor.com/1998/1218/121898.us.us.5.html> (The IOC’s critics have previously made accusations that the organization’s size allows for rogue Session members to corrupt the Olympic bidding process).

182. See *supra* Section III.

183. See BARNEY ET AL., *supra* note 48, at 277.

184. See, e.g., GREGORY VARALLO, FUNDAMENTALS OF CORPORATE GOVERNANCE: A GUIDE FOR DIRECTORS AND CORPORATE COUNSEL 203 (2 ed. 2009).

blame individually and derides them as bad actors.¹⁸⁵ The IOC could argue that this demonstrates that it is not a corporate entity, but a constitutionally-driven entity, and thus should not be subject to U.S. jurisdiction.¹⁸⁶ While this argument may keep the IOC out of a U.S. courtroom, it would bolster the previous argument that the IOC should appear before the ICJ to answer for its failures.

C. Can the IOC Reform Itself?

There is also the possibility of reform coming from within the Olympic Movement. “Voluntary” reforms could be required of the IOC from its own internal stakeholders.¹⁸⁷ Reform is not possible without some amount of transparency, as “public availability of pertinent information about the decisions of global administrators and their consequences fosters public discussion and debate about a body’s policies and performance.”¹⁸⁸ Reform efforts could be justified by the IOC’s self-imposed mission “to strengthen the unity of the Olympic Movement, to protect its independence and to preserve the autonomy of sport.”¹⁸⁹ In the case of the IOC, its ultimate constituents and those who could theoretically wield power are the athletes themselves. Alternatively, either corporate sponsors or host cities could demand the IOC address its issues as a condition of either advertising or host city contract negotiations.

Without athletes, there would be no reason to stage the Olympic Games or for the IOC to exist. Despite the centrality of athletic performance to the Olympic Movement, the majority of athletes have little to no say in the direction of the IOC or even have information regarding the IOC’s decision-making process.¹⁹⁰ Information is essential “for the effective exercise of decisional participation rights by those who have some role in the internal decisional process but are not powerful

185. MILLER, *supra* note 7, at 328.

186. *See id.* at 332.

187. *See* STEWART, *supra* note 162.

188. *Id.* at 259.

189. IOC, *supra* note 3, ¶ 5, at 18.

190. *See* HOBSON *supra* note 15.

founders or members.”¹⁹¹ Therefore, the IOC should expand its athlete membership and involvement in IOC decisions.

The IOC could argue that it has previously committed to involving athletes in Olympic Movement strategic development. As of 2015, there are fifteen permanent seats reserved for athlete representatives in the IOC Session.¹⁹² However, these seats are only 13% of the entire 115-member Session.¹⁹³ The IOC’s steps to expand participation by current athletes is insufficient, as it lacks a true balance of power requisite for accountability.¹⁹⁴ One way to expand athlete participation could be to permit at least one athlete from each nation’s Olympic team to share the seat of an IOC Session member from the same country. Alternatively, the Athlete Congress could be empowered as an additional organ of the IOC with the same power and rank as the IOC Session, giving the IOC a bicameral form of governance.

The IOC to some extent includes former athletes among its leadership ranks.¹⁹⁵ However, those leaders appear to be more focused on maintaining their current reputation than improving the equality of athletic performance.¹⁹⁶ For example, athletes strongly supported a ban of all athletes involved in the Russian doping scandal in 2016, yet IOC leadership refused a total ban on the Russian Federation team for concern of “death and devastation.”¹⁹⁷ Some nations’ Olympic Committees may serve a broad role as a ministry of sport.¹⁹⁸ Retired U.S. athletes who have found some ability to assert their voice and opinions may lack

191. STEWART, *supra* note 162, at 259.

192. IOC, *supra* note 3, ¶ 1.1.2, at 34.

193. *Id.*

194. STEWART, *supra* note 162, at 266–67.

195. Jacques Rogge, eighth IOC president, was a former Olympic competitor. BRITANNICA, *Jacques Rogge*, <https://www.britannica.com/biography/Jacques-Rogge> (last visited Dec. 8, 2018).

196. *See infra* notes 159–60.

197. Ruiz, *supra* note 123.

198. *See, e.g.,* HOBSON & RICH, *supra* note 14. The United States Olympic Committee has a narrow scope focused on the accumulation of medals by elite athletes. *Id.* Athletic administration in the United States is subject to the Ted Stevens Act, which has been interpreted to require significant due process standards for disputes related to athletic competition. *Id.*

current standing or be limited by statutes of limitation to actually bring charges.¹⁹⁹

A second possible constituent that could assert demands on the IOC are the bidding and selected host cities for the Olympic Games.²⁰⁰ This group could possibly justify expanded transparency through analysis and application of the Olympic Charter.²⁰¹ The national government of an applicant city is obligated to execute a binding agreement with the IOC to, among other things, respect the Olympic Charter.²⁰² The power of this contract can override provisions of the country's own constitution.²⁰³ Thus, much as the IOC has used this agreement to achieve its own political ends, the national governments of those cities seeking to bid for future Olympic Games could impose their own conditions for hosting upon the IOC.

However, while the bidding and host cities may be powerful constituents, these entities are unlikely to assert power. First, multiple host nation applicants would have to agree to be willing to use this power in order to achieve a goal. If one nation were to go alone against the IOC, the IOC could simply refuse to consider that nation's host city application. The mutually-assured negotiating position could be possible given the number of cities that have backed out of the bidding process in recent years, leading to a smaller pool of applicants. The second reason why this may not work is more cynical: it is cheaper for host cities to bow out of the Olympic circus than to try and fight, and addressing those concerns would likely only add to the expense of hosting an Olympic Games.

One last constituent that could wield influence over the IOC are its corporate sponsors. The IOC has traditionally had the upper hand in negotiations with host cities through its control of Olympic Games' television and merchandising rights, which can generate revenues shared with the OGOC.²⁰⁴ Olympic Games Organizing Committees (OGOC) are

199. See, e.g., *Young v. USA Track & Field and U.S. Olympic Comm.*, 2004 WL 3679110 (S.D. Ind. Mar. 12, 2004).

200. See, e.g., Reisinger, *supra* note 12 (the successful negotiation of an anti-corruption clause in the Olympic Host Contract).

201. See generally IOC, *supra* note 3.

202. IOC, *supra* note 3, ¶ 3, at 72.

203. See generally Sagen, [2009] B.C.C.A. 522.

204. BARNEY ET AL., *supra* note 48, at 181.

also responsible for securing private financial resources which underwrite the expenses of hosting an Olympic Games.²⁰⁵ Meanwhile, athletes are barred from supporting their own sponsors, using their image for advertising during the Games, or receiving compensation for Olympic participation.²⁰⁶ Therefore, corporate sponsors have a powerful voice and influence over IOC decisions. For example, it was in the interest of corporate sponsorship that the IOC began to relax its rules regarding professional athlete competition in the Olympic Games.²⁰⁷

Most corporations now have policies and statements that support human rights and oppose human trafficking, discrimination, and substance abuse.²⁰⁸ One sponsor publicly demanding the IOC take actions to improve the Olympic Movement or the money walks may create enough of a public stir that the IOC would listen. Where courts, countries, athletes, and host cities fail, perhaps the IOC's corporate sponsors may succeed.

A final option available to the IOC at this juncture is to begin the process of total Olympic Movement reform from within the Movement. The answer could be to abandon the nomadic tradition of Olympics Games travelling between host cities as it has done for more than a century. In its place, the IOC could establish permanent Olympic Games facilities.²⁰⁹ One suggestion has called for a Summer Olympic Games facility in Greece with a similar Winter Olympics Games facility in a climate-appropriate location, such as Lausanne, Switzerland.²¹⁰ Each location could host year-round training facilities that could make

205. *Id.* at x (Preamble).

206. See Davey Alba, *Athletes Battle the Olympic Brass for the Right to Make Money*, WIRED (Aug. 12, 2016), <https://www.wired.com/2016/08/olympians-take-back-social-media-rule40/> (referencing prohibition on athlete-directed sponsorship and endorsement activities).

207. LLEWELLYN & GLEAVES, *supra* note 107, at 182–185.

208. E.g., *Supply Chain Ethics*, LOCKHEED MARTIN, <https://www.lockheedmartin.com/en-us/who-we-are/ethics/human-trafficking.html> (last visited Nov. 4, 2018); e.g., *Code of Conduct*, General Mills 24-27, <https://www.generalmills.com/en/Responsibility/ethics-and-integrity/code-of-conduct> (last visited Nov. 4, 2018).

209. John Nauright, *A single, permanent Olympic site would help us reclaim the integrity of sport*, CONVERSATION (Nov. 16, 2015), <https://theconversation.com/a-single-permanent-olympic-site-would-help-us-reclaim-the-integrity-of-sport-50571>.

210. *Id.*

oversight logistically easier and reduce costs for individual countries to enter competition, as otherwise international competition remains cost prohibitive and serves as a means of class exclusion.²¹¹

The IOC should strongly consider support of this option. A permanent Olympic City would enable the IOC to assert tighter control over the Olympic Games and related Olympic Movement events and eliminate the need for OGOCs. This can offer cost savings even to the IOC, which now visits host cities at the IOC's expense.²¹² While the Summer Olympics have been committed through 2028, the IOC was likely only able to secure host cities after granting concessions on fees amid concerns of skyrocketing host costs.²¹³ Corporate sponsors could be offered involvement to offset the initial construction costs.²¹⁴ Additionally, a permanent location could present new opportunities for and greater control over advertising.²¹⁵ The Olympic Movement touts its marketing abilities,²¹⁶ and the IOC controls the money Olympics receive through sponsors and advertising.

However, there are several challenges to this final reform option. The locations suggested for a permanent location—Athens, Greece and Lausanne, Switzerland—have strong ties to the Olympic tradition, but all are European destinations. Europeans hold almost half of all IOC seats, and have led the IOC for the majority of its history.²¹⁷ There is little involvement of non-Europeans, even Americans, in the current IOC leadership.²¹⁸ A permanent European home for the Olympic Games could be alienating to the majority of the world.

More cynically, this reform option goes against the current interests of IOC. It is widely reputed that bribes influence the location of the Olympics, and thus, eliminating the selection process also eliminates a

211. LLEWELLYN & GLEAVES, *supra* note 107, at 63.

212. BARNEY ET AL., *supra* note 48, at 268.

213. Zach Zaggar, *LA 2028 Olympics Deal Reflects New Bidding Dynamic For IOC*, LAW360 (Aug. 7, 2017), <https://advance.lexis.com/api/permalink/738c9511-71f1-4bf0-b041-0fcde6cc4edb/?context=1000516>.

214. Nauright, *supra* note 209.

215. *See id.*

216. LLEWELLYN & GLEAVES, *supra* note 107, at 191.

217. BARNEY ET AL., *supra* note 48, at 286.

218. *Id.*

potential payday for IOC members.²¹⁹ A permanent home for the Olympic Games, especially in the IOC's own backyard in Lausanne, certainly prevents the opportunity for first-class travel to a variety of locations around the world.

V. CONCLUSION

The U.N.'s 2030 goals include recognition of sport as a means of individual empowerment and advancing social peace.²²⁰ While the IOC claims this as a "historic moment" for itself,²²¹ this singular paragraph does not mention the Olympics in particular or the IOC at all. Perhaps this is for the better. The world's most popular sport, football, requires nothing more than "kick[ing] a ball toward[s] a goal without using their hands."²²² Running is another nearly-universal pursuit that can be practiced simply by testing how far one's feet can carry them, shoes optional. Sport is a fundamental human right, and both of these nearly-universal pursuits can and should be enjoyed without the elaborate infrastructure, bureaucrats, or performance enhancing substances. The Olympic Games are merely an outlet for the eternal pursuit of faster, higher, and stronger athletic performance.

Citius, Altius, Fortius.

219. Tim Wostall, *Time For A Permanent Home For The Olympics Before It Bankrupts Another City*, FORBES (Aug. 7, 2016), <https://www.forbes.com/sites/timworstall/2016/08/07/time-for-a-permanent-home-for-the-olympics-before-it-bankrupts-another-city/#2ed2c09f134f>.

220. G.A. Res. 70/1, ¶ 37 (Sept. 25, 2015).

221. Butler, *supra* note 26.

222. Bean, *supra* note 136, at 371–72.